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Supreme Court, U.S.
FILED
MAY 12 2005
OFFICE OF THE CLERK

No. 04-1358

In The Supreme Court of the United States

DONALD E. WHITE and AUSTA M. WHITE,

Petitioners,

vs.

STEVEN A. TSCHERTER, DANA UHLENHOPP, CORDELL Q. PETERSON, JAMES SCHNEIDER, CAROL PETERSEN, LINCOLN SAVINGS BANK and LINCOLN BANCORP,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals for the Eighth Circuit err in dismissing the Petitioners' appeal and in denying a stay of the Iowa State District Court foreclosure proceeding?

CORPORATE DISCLOSURE STATEMENT

Lincoln Savings Bank and Lincoln Bancorp are corporations organized and existing under the laws of the State of Iowa. One hundred percent of Lincoln Savings Bank's shares are owned by Lincoln Bancorp. No publicly held corporation owns 10% or more of Lincoln Bancorp's stock.

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STATEMENT OF THE CASE

I. Procedural background.

On July 2, 2004, the Petitioner filed a pro se complaint (comprised of 439 paragraphs spanning 147 pages, a "memorandum" of 33 pages and several hundred pages of exhibits) against the Respondents in the Untied States District Court for the Northern District of Iowa. The complaint appeared to be based upon the Petitioners' banking relationship with Lincoln Savings Bank and their alleged status as "living, natural-born, sovereign human beings, individuals statutorily repatriated from the democracy of the corporate UNITED STATES to the Republic state of Arkansas . . . "

On September 1, 2004, a Notice of Entry of Appearance was filed by one Anita J. Vedder on behalf of the Petitioners. (Ms. Vedder is not an attorney.) On September 1, 2004, U.S. District Court Magistrate Judge John A. Jarvey entered an order noting that Ms. Vedder was not admitted to practice law in the U.S. District Court for the Northern District of Iowa and that she did not appear to be "an attorney admitted to practice in any court." The order went on to direct the Clerk not to accept further filings from Ms. Vedder submitted on behalf of the Petitioners.

On September 17, 2004, the Petitioners filed a Notice of Appeal in the United States Court of Appeals for the Eighth Circuit, wherein they apparently appealed Magistrate Judge Jarvey's order prohibiting Ms. Vedder from filing further pleadings on the Petitioners' behalf. On October 4, 2004, the Respondents filed a Motion to Dismiss the Appeal. On October 4, 2004, the Petitioners filed a motion in the pending appeal before the Eighth Circuit

in which they requested that the United States Eighth Circuit Court of Appeals enter a stay with respect to a foreclosure proceeding which was pending in the Iowa State District Court in Bremer County, Iowa. On October 12, 2004, the Respondents filed their resistance to the Petitioners' motion for a stay. On October 22, 2004, the Eighth Circuit entered an order denying the Petitioners' motion for a stay and granting the Respondents' dismissal of the appeal. The Petitioners filed a motion to reconsider on November 2, 2004, which was denied on November 24, 2004. It is, apparently, the Eighth Circuit Court of Appeal's order which dismissed the Petitioners' appeal and denied their stay for which the Petitioners now seek review.

II. Clarification of the record.

Respondents take exception to the following statements made by the Petitioners in their statement of material facts:

1. Petitioners make several references to orders of the lower courts being "unsealed" and "unfiled." Respondents are not sure what the Petitioners mean by unsealed, but certainly dispute whether any order entered in this case is subject to attack for not being sealed in a manner acceptable to the Petitioners. Further, Respondents believe that all orders of the lower courts were properly filed after being entered.

2. The Respondents dispute the Petitioners statement on page 4 of their petition with respect to sovereign obligations being created between the Petitioners and Anita J.

Vedder as a result of any private contract. Any contract which resulted in or required the unauthorized practice of law by Anita J. Vedder would be illegal and unenforceable.

3. The Respondents are not sure what is meant by the Petitioners' assertion on page 5 of their petition that the Eighth Circuit Court of Appeals was "driving events in four separate inferior courts." As set forth in the procedural background in this brief, the decision of the Court of Appeals dismissed an appeal from the United States District Court for the Northern District of Iowa and refused to enter a stay of a foreclosure proceeding in the Iowa District Court for Bremer County, Iowa.

4. The assertion on page 5 of the petition that the Petitioners filed a complaint against "the principals of Lincoln Savings Bank" is disputed. The Petitioners have filed myriad litigation against the entities who are the Respondents in this case.

5. The assertion at page 5 of the petition that the Petitioner Austa M. White was voluntarily discharged from the "Eighth Circuit U.S. Bankruptcy Court" is disputed. There is no such thing as the Eighth Circuit U.S. Bankruptcy Court. Ms. White did at one time file a petition for relief in the United States Bankruptcy Court for the Western District of Arkansas.

6. The Petitioners' assertion at page 6 of the petition that four separate courts have issued orders and directives which are contrary to the Federal Rules of Civil Procedure,

Federal Rules of Appellate Procedure, Federal Rules of Evidence or local court rules is disputed. Respondents assert that any and all actions taken by any court in connection with the Petitioners' dispute with the Respondents have been lawful and appropriate.

7. The Petitioners' assertion at page 7 of the petition that the Respondents initiated a "collateral contingent foreclosure proceeding" in the Iowa District Court for Bremer County is disputed. There was nothing collateral or contingent about the foreclosure proceeding initiated in the Iowa State District Court. It was separate and independent of any federal court proceeding. No federal court proceeding ever stayed the Bremer County District Court foreclosure proceeding.

8. The assertion that the Respondents made perjured affidavits set forth at page 7 of the petition is disputed. The Respondents have engaged in no perjurous statement or conduct or action in connection with any dispute involving the Petitioners.

REASONS FOR DENYING THE WRIT

I. Petitioners have not articulated a compelling reason to justify discretionary review by this Court.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari

will be granted only for compelling reasons." Sup. Ct. R. 10.

It is difficult to ascertain the nature of the Petitioners' argument with respect to why this Court should grant certiorari. It is evident, however, that none of the reasons articulated in Supreme Court Rule 10(a), (b) or (c) are present in this case.

II. The Lower Court did not err in deciding this case.

The order of the Court of Appeals for which the Petitioners seek issuance of a writ of certiorari did two things: It granted the Respondents' motion to dismiss the Petitioners' appeal and it denied the Petitioners' motion to stay a pending Iowa State Court foreclosure proceeding. As previously stated, Petitioners' appeal was based upon their dissatisfaction with Magistrate Judge Jarvey's order forbidding the unauthorized practice of law in the United States District Court for the Northern District of Iowa by Anita Vedder. The United States District Court for the Northern District of Iowa has rules which govern the practice of law in cases pending before the court. Under those rules, a non-lawyer such as Ms. Vedder is prohibited from representing private litigants such as the Petitioners. U.S. District Court N.D. Iowa R. 83.2(d)(1). This Court has similar restrictions. Only attorneys who have been admitted to practice before this Court are allowed to file any document with this Court. Sup. Ct. R. 9. It is fundamental that the courts are empowered to regulate the practice of law with respect to proceedings brought before them. The

Eighth Circuit decision dismissing the Petitioners' appeal was obviously appropriate.

In its order of October 22, 2004, the Eighth Circuit denied the Petitioners' request for a stay of a pending state court foreclosure proceeding. Again, the Eighth Circuit Court of Appeal's decision was entirely appropriate in this regard. Under 28 U.S.C. 1291 and 1294(1) and 28 U.S.C. 1292, the United States Court of Appeals is not given appellate jurisdiction over interlocutory or final decisions of state district courts. The jurisdiction granted is, of course, over interlocutory and final decisions of the **United States District Courts**. Therefore the Eighth Circuit Court of Appeals would not have jurisdiction to hear a direct appeal of a decision of the Iowa District Court for Bremer County, Iowa. Similarly, under Fed. R. App. P. 8, the Court of Appeals has authority to grant stays with respect to matters pending in United States District Courts, not state district courts. The remedy of a stay sought by the Petitioners was not available to them in the Eighth Circuit Court of Appeals.

CONCLUSION

The Petitioners' Petition for writ of certiorari should be denied for the reasons set forth above.

Respectfully submitted,

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